

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

DANIEL C. JOHNSON,

Petitioner,

v.

RON FRAKER,

Respondent.

NO. C10-5090 BHS/KLS

ORDER GRANTING
PETITIONER'S MOTION TO STAY
AND HOLD PETITION IN
ABEYANCE

Before the court is Petitioner's motion to stay and hold his habeas corpus petition in abeyance. Dkt. 10. Respondent filed no response to Petitioner's motion.

Mr. Johnson filed his federal habeas corpus petition challenging his state court convictions on February 4, 2010. Dkt. 1. Respondent filed his response and submitted relevant portions of the state court record (Dks. 8 and 9), arguing that Mr. Johnson's claims should be dismissed with prejudice because they are unexhausted and would soon be procedurally barred if Mr. Johnson failed to file a personal restraint petition in state court before May 8, 2010. Dkt. 8. In response, Mr. Johnson filed a motion for stay and abeyance of his federal habeas corpus petition while he pursues his state court remedies. Dkt. 10. Mr.

Johnson has advised the court that he filed a personal restraint petition in the Washington Supreme Court on April 21, 2010. Dkt. 11, p. 3.

DISCUSSION

The Court may stay a petition where the stay would be a proper exercise of discretion. *Rhines v. Weber*, 125 S. Ct. 1528, 1534 (2005); *see also Fetterly v. Paskett*, 997 F.2d 1295 (9th Cir. 1993); *Calderon v. United States Dist. Court (Thomas)*, 144 F.3d 618, 620 (9th Cir. 1998); *Anthony v. Cambra*, 236 F.3d 568 (9th Cir. 2000). Respondent has filed no opposition to Mr. Johnson's request to stay his federal proceedings. The court finds that a stay of the federal proceedings is appropriate pending resolution of the pending state court proceeding. Neither party should be prejudiced by a stay of these proceedings.

Accordingly, it is **ORDERED**:

(1) Petitioner's motion for a stay (Dkt. 10) is **GRANTED** and this matter is **STAYED** pending resolution of the state court proceedings.

(2) Petitioner shall advise the Court within thirty (30) days of receiving a final State court ruling.

DATED this 26th day of May, 2010.



Karen L. Strombom
United States Magistrate Judge